

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STEPHEN M. FLATOW,	)	
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	)	
Plaintiff,	)	
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	)	
	)	
	)	C.A. No. 97-396 (RCL)
THE ISLAMIC REPUBLIC OF IRAN,	)	
THE IRANIAN MINISTRY OF INFORMATION)	)	
& SECURITY,	)	
AYATOLLAH ALI HOSEINIE KHAMENEI,	)	
ALI AKBAR HASHEMI-RAFSANJANI,	)	
ALI FALLAHIAN-KHUZESTANI, and	)	
JOHN DOES 1-99,	)	
	)	
Defendants.	)	
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MEMORANDUM AND ORDER

The United States moves to quash the writ of attachment issued by the Clerk of this court on February 23, 2000, by which plaintiff purports to attach "all property, trusts, credits or assets of any type whatsoever of either defendant. . . being held by the United States of America under the jurisdiction of the Department of Defense." Upon consideration of the United States' motion, the opposition thereto, the applicable law, and for the reasons set forth below, the court hereby GRANTS the United States' motion and the writ of attached is QUASHED.

I. BACKGROUND

The present matter represents another effort by plaintiff

Stephen M. Flatow to execute the judgment he obtained against the Islamic Republic of Iran under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1602-11 (1996 and Supp. 1999), for the wrongful death of his daughter Alisa, who was killed in a 1995 terrorist bombing of a tourist bus in Gaza. *See Flatow v. The Islamic Republic of Iran, et al.*, 999 F. Supp. 1, 5 (D.D.C. 1998)(entering default judgment against Iran and its codefendants and finding them jointly and severally liable for compensatory damages, loss of accretions, solatium and \$225,000,000.00 in punitive damages). Thus, far, each of Flatow's previous attempts to satisfy his judgment against Iran have proven fruitless. *See, e.g., Flatow v. Islamic Republic of Iran, et al.*, 76 F. Supp.2d 16, 18 (D.D.C. 1999)(quashing writs of attachment directed against Iranian real estate in Washington, D.C., including the former Iranian embassy, and two bank accounts containing funds generated by the State Department's lease of such properties to third parties); *Flatow v. Islamic Republic of Iran, et al.*, 76 F. Supp.2d 28, 29 (D.D.C. 1999) (quashing writ of attachment directed at arbitration award issued by Iran-United States Claims Tribunal in favor of Iran against garnishee); *Flatow v. Islamic Republic of Iran, et al.*, 74 F. Supp.2d 18, 25 (D.D.C. 1999)(quashing writ of attachment issued to the United States

Treasury, directed at "all credits held by the United States to the benefit of the Islamic Republic of Iran"); *Flatow v. Islamic Republic of Iran, et al.*, 67 F. Supp.2d 535, 543 (D. Md. 1999) (quashing writs of execution against nonprofit foundation's property). The present writ of attachment is directed to the Secretary of Defense and purports to attach the "property of the Defendants, The Islamic Republic of Iran and/or The Iranian Ministry of Information and Security . . . , which is believed to be in the possession, care, custody, held in trust, or otherwise within the control and/or jurisdiction of the United States Department of Defense," including defendants' Foreign Military Sales Accounts ("FMS"), all accounts related to such FMS Accounts, and all accounts, property, credits, or "assets of any type whatsoever." Writ of Attachment on Judgment, Exh. A, United States Motion to Plaintiff's Quash Writ of Attachment and For Interim Relief ("Motion to Quash"), March 22, 2000.

By way of background, the Foreign Military Sales, or FMS, program is governed by the Arms Export Control Act, 22 U.S.C. §§ 2751 *et seq.*, under which the President and the Department of Defense enter into agreements with eligible foreign governments and international organizations to sell defense articles and services. Declaration of A. Robert Keltz ("Keltz Decl."), ¶ 4, Exh. B, Motion to Quash. Sales of such articles

or services can either be from Defense Department stock or procurements, whereby the U.S. government contracts with third parties for the supply of the goods and services. *Id.*

Receipts from FMS customers are credited to the FMS Trust Fund ("FMS Fund"), whose funds are on deposit in the United States Treasury pursuant to the Arms Export Control Act. *Id.* at ¶7.

The FMS Fund contains the aggregated receipts for all FMS customers. *Id.* To track each FMS customer's deposits, collections, payments, refunds and adjustments, however, the FMS Fund is separated at the country or customer level into 183 accounts. *Id.*

At the end of the 1970s, Iran had one of the largest FMS programs with the United States. Yet, in 1978 and 1979, Iran began to fall behind in its payments. By February 1979, Iran restructured its program and canceled orders for major weapons systems and other FMS orders. And, on November 4, 1979, the U.S. Embassy and hostages were taken in Iran. Subsequently, on November 19, Iranian officials repudiated Iran's foreign obligations. Since that time, the United States has continued to credit and/or debit the FMS Fund with funds received or disbursed on behalf of other FMS program participants. *Id.* at ¶ 12.

Notwithstanding its earlier repudiation of its foreign obligations, however, in 1981, Iran filed billions of dollars

of claims against the United States based on the FMS program in the Iran-U.S. Claims Tribunal. In response, the United States counterclaimed Iran for \$817 billion for its failure to safeguard certain FMS equipment under the terms of their agreements. *Id.* These claims continue to be litigated before the Tribunal. According to the United States, it is unknown how much, if any of Iran's FMS account, which has an estimated current cash balance of approximately \$400 million, will be owed to Iran by the United States until the Tribunal claims are resolved. In the meantime, however, the Defense Department continues to make disbursements and accounting adjustments from the Iran FMS account for items procured from contractors, storage costs and account reconciliation costs for 11 FMS cases. *Id.* at ¶ 14.

## II. DISCUSSION

In moving to quash this writ of attachment, the United States advances three principle arguments. First, the United States maintains that the present writ of attachment is barred by the "law of the case" doctrine. *See Flatow v. Islamic Republic of Iran, et al.*, 74 F. Supp.2d 18, 19 (D.D.C. 1999) (quashing writ of attachment directed to the United States Treasury and "all credits held by the United States to the benefit of the Islamic Republic of Iran"). Alternatively, the

United States asserts that even if the fate of the instant writ is not already determined by the law of the case, the doctrine of sovereign immunity operates as a jurisdictional bar. Finally, the United States challenges the current writ on procedural grounds, contending it does not conform to the requirements of Rule 69(a) or Rule 4.1(a) of the Federal Rules of Civil Procedure.

In response, plaintiff argues that law of the case does not apply in this instance because the court's previous opinion only addressed the question of whether the United States had waived its sovereign immunity for "blocked" assets in the possession of the United States Treasury. Yet plaintiff advances that the issue presented here— whether plaintiff can attach Iranian property (the FMS funds) held "in trust" in the U.S. Treasury by the United States—is different. Similarly, plaintiff asserts that sovereign immunity does not bar this suit because the FMS funds constitute Iranian property, not United States property, and Iran's immunity has been "except[ed]" by Section 1610(a)(7) of the FSIA. Lastly, plaintiff contends that the writ was not procedurally defective under the applicable Federal Rules of Civil Procedure.

The court agrees with the United States that the present writ of attachment is barred by law of the case. Finding the

writ improper on those grounds, the court need not address the United States' alternative bases for quashing the writ. As the United States correctly notes, this court's prior decision quashing plaintiff's writ directed at "all credits held by the United States to the benefit of the Islamic Republic of Iran" disposes of the present writ as well. In that opinion, the court held that because plaintiff had failed to identify an unequivocal waiver, the writ of attachment against the U.S. Treasury was barred by sovereign immunity as a suit against the United States. *Flatow*, 74 F.Supp.2d at 22 (finding that funds were held in U.S. Treasury and that their attachment constitutes a suit against the United States, which is barred by sovereign immunity absent "an explicit, unequivocal waiver"). In so holding, the court specifically noted that controlling authority has determined that a creditor's attachment or garnishment action against the U.S. Treasury constitutes a suit against the United States that is barred by the doctrine of sovereign immunity, absent an effective waiver. *Flatow*, 74 F. Supp.2d at 21 (citing, *inter alia*, *Department of the Army v. Blue Fox*, 525 U.S. 255 (1999); *Buchanan v. Alexander*, 45 U.S. (How.) 20 (1846); and *Arizona v. Bowsher*, 935 F.2d 332, 334 (D.C. Cir. 1991)). Here, it is undisputed that the present writ seeks to attach funds that are held in the U.S. Treasury. Thus, contrary to plaintiff's

assertions, the issue presented by the current writ is on all fours with that posed by the previous writ. Thus, the principle of law of the case, which ensures that "the same issue presented a second time in the same case in the same court should lead to the same result," dictates that this writ also be quashed. *LaShawn A. v. Barry*, 87 F.3d 1389, 1393 (D.C. Cir. 1996)(*en banc*). Accordingly, plaintiff's writ of attachment directed at Iranian FMS funds held in the U.S. Treasury must be quashed.

### III. CONCLUSION

For the reasons set forth above, it is hereby  
ORDERED that the United States' Motion to Quash  
Plaintiff's Writ of Attachment is GRANTED; and it is further  
ORDERED that the writ of attachment is QUASHED.  
SO ORDERED.

DATE:

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Royce C. Lamberth  
United States District Judge